



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

JIGJr. 02-06

Paper No: ____

TIMOTHY D. SMITH
BROUSE MCDOWELL, LPA
STE. 500
106 S. MAIN STREET
AKRON OH 44308-1471

COPY MAILED

FEB 02 2006

OFFICE OF PETITIONS

In re Application of	:	
Spivak et al.	:	
Application No. 10/805,689	:	DECISION ON PETITION
Filed: 22 March, 2004	:	
Attorney Docket No.: 31399.25504	:	

This is a decision on the petition filed on 7 October, 2005, under 37 C.F.R. §1.47(a).

The petition is **DISMISSED as moot**.

BACKGROUND AND ANALYSIS

The record reflects that:

- the instant application was filed on 22 March, 2004, absent, *inter alia*, a fully executed oath/declaration;
- when Petitioner's 11 August, 2004, response to the 7 June, 2004, Notice of Missing Parts was insufficient (unsigned oath/declaration) the Office mailed a Notice of Incomplete Reply on 1 September, 2004;
- on 19 January, 2005, Petitioner Timothy D. Smith (Reg. No. 50,880) replied (with a request and fee for extension of time) with an oath/declaration signed by co-inventors Messrs. Mastandrea, Thomason and Niedel, but without the signature of non-signing

inventor Paul Spivak (Mr. Spivak), and with a statement by Petitioner that “a letter was sent to Mr. Spivak with the Oath and declaration requesting his signature,” and there was no indication that a copy of the entire application (description, claims, abstract and drawings) was presented to Mr. Spivak as required, and so the petition was dismissed on 9 March, 2005;

- the instant petition was filed on 7 October, 2005, with, inter alia, a request and fee for extension of time and an oath/declaration signed by Mr. Spivak—under additional papers Petitioner also seeks a decision on a petition under 37 C.F.R. §1.48 as to the inventive entity with statements of concurrence by Messrs. Mastandrea, Thomason and Nidel.

Thus, it now appears that the oath/declaration has been signed by all inventors.

In view of the joinder of the inventors, further consideration under Rule 1.47(a) is not necessary and the petition is considered to be moot. This application does not have any Rule 1.47 status and no such status should appear on the file wrapper. This application need not be returned to this Office for any further consideration under Rule 1.47(a).

CONCLUSION

For the foregoing reasons, the instant petition is **dismissed as moot for joinder**.

Because a substantive determination on the petition under 37 C.F.R. §1.47(a) is obviated by Mr. Spivak’s joinder, the petition under 37 C.F.R. §1.47(a) properly is referred to the Examiner for a determination.

This application is being released to OIPE for further processing as necessary before being returned to substantive examination in due course.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3214.



John J. Gillon, Jr.
Senior Attorney
Office of Petitions